

U.S. Army Corps of Engineers

Revisions to the Regulatory Program Procedures for Historic Properties

Background: The Corps Regulatory Program published Appendix C in 1990, followed by Interim Guidance (2002 and 2005) and is currently using these procedures to comply with Section 106 of the National Historic Preservation Act (NHPA). The NHPA was most recently amended in 1992, after Appendix C was published in the Federal Register. The Advisory Council on Historic Preservation's (ACHP) implementing regulations to the NHPA (36 CFR Part 800) were subsequently revised in 2000 and 2002. In an effort to remain consistent with the ACHP regulations, the Corps is now re-evaluating its Regulatory Program procedures for historic properties and other cultural resources through rulemaking. The Corps issued an Advance Notice of Proposed Rulemaking (ANPRM) in September of 2004. In October of 2004, copies of the ANPRM were mailed to all of the federally recognized Tribes and Alaska Native villages in the United States along with a letter requesting comments and suggestions regarding the revised procedures. A follow-up letter was mailed to the Tribes in November of 2006, inviting formal consultation. The Corps also held several stakeholder meetings in 2005 and 2006.

Current Status: The Corps recognizes that formal consultation is not achieved solely through the issuance of an ANPRM or other written correspondence; it must be accomplished through face-to-face meetings on a government-to-government basis. To that end, the Divisions and Districts are corresponding with their resident tribes and scheduling consultation meetings which are slated to occur throughout the summer of 2007. To date, over 25 meetings are planned to initiate consultation. Once the meetings are underway, and we begin to receive comments and suggestions, we will commence development of our new procedures under 36 CFR part 800.14. During this time the Corps will work closely with the ACHP. The Corps continues to seek and receive public comments and program suggestions and is available to meet with the public, stakeholders and Tribes upon request. By the fall of 2007, the draft alternate procedures will be formally submitted to the ACHP for review. Subsequent to ACHP review, the alternate procedures will be forwarded to the Office of Management and Budget for vetting and rulemaking.

Public/Tribal Involvement: The public and the Tribes will have additional opportunities to review the procedures and provide comments. In the fall of 2007, the Corps will publish a notice of availability of alternate procedures in the Federal Register. At that time, both the Tribes and the public will have at least 30 days to provide feedback. If necessary, additional meetings with the Tribes, the public, stakeholders, and other interested parties may occur in response to the notice. A final opportunity to submit formal comments will be available when the final draft rule is published in the Federal Register in the spring/summer of 2008.

How to Comment: The Corps will consider all relevant comments it receives with respect to the current procedures used to assess impacts to historic properties and other cultural resources (Appendix C). The current Appendix C can be found at the following website:

<http://www.usace.army.mil/cw/cecwo/reg/33cfr325.htm#appendixC>

Once the revised program procedures have been developed, they will also be made available for public review and comment. The most effective way to submit comments on the existing or revised procedures is in writing. You may submit your comments directly to Corps Headquarters staff or you may send them to Detroit District Regulatory Branch. Both addresses are provided below:

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